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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant, Case No. SC21-694

v.

MARC JEREMY SOSS,

Respondent.
_____/

RECEIVED, 06/01/2021 12:57:27 PM, Clerk, Supreme Court

ANSWER AND DEFENSES

COMES NOW the responding attorney, MARC JEREMY SOSS, through undersigned counsel, and answers the Complaint including defenses and states as follows:

1. Admit that Respondent is a member of the state bar and is subject to this Court's jurisdiction.

2. Admitted for purposes of venue.

3. Without knowledge as to what others have done.

4. Admitted.

5. Admitted that representation occurred later.

6. Admitted that Mr. Johnson's filing was motivated by greed and that an expert in guardianship law determined it to be an inappropriate use of a guardianship proceeding.

7. See answer 6 supra; the court made no determination of incapacity.

8. Admitted; also admit that Robert Johnson died in August 2015 and that attorney James Essenson kept the case going for pure greed by soliciting a beneficiary, a nephew, Marshall Bloom, whose behest totaled $5,000 out of an estate worth several million dollars.

9. Admitted that, using Marshall Bloom, attorney Essenson filed a Petition for Administration in said probate case despite the fact there were no assets that required a probate proceeding, and admitted that Marshall Bloom was removed as the Personal Representative for multiple breaches of fiduciary duty.

10. Admitted; also admit that Dorothy Bloom was spending nearly $20,000 each month for said health care, which depleted the funds that Robert Johnson as Leon Bloom's lawyer sought through litigation to preserve for his own grandchildren, whom he had unethically included as beneficiaries in drafting the trust.

11. Respondent admits that he did so until Mrs. Bloom appointed him trustee.

12. Denied; Robert Johnson was not a party to the settlement, thus it was not "global."

13. Admitted.

14. Admitted that Caldwell resigned due to the vexatious and litigious conduct of Messrs. Johnson and Essenson regarding the trust.

15. Admitted that Article 27 of the Trust Agreement granted Dorothy Bloom sole authority to select a successor trustee when such need arose.

16. Admit that the document speaks for itself.

17. Admit that on July 23, 2015, Mrs. Bloom appointed Respondent and Raymond James as successor trustees.

18. Admitted that Raymond James resigned for the same reasons that Caldwell Trust had resigned.

19. Admitted because that is required by statute.

20. Admitted that Respondent was only required to serve a notice of appointment to the beneficiaries and to Robert Johnson, which he did; further admitted that Respondent was not specifically ordered to file notice with the court and that no statute requires such filing—only service to the beneficiaries.

21. Admitted.

22. Admitted, but see answer 20, supra; further note that Robert Johnson's counsel never raised this issue in objecting to the appointment nor in his later motion to disqualify.

23. Admitted, see answers 15 and 20, supra.

24. Denied that any such order ever "mandated" anything of the sort and demand strict proof; nothing in the said order states that the successor trustees' appointment must be confirmed by the court. See answers 15 and 20, supra.

25. Denied as impertinent opining by a different judge over three years later. The judge's opinion quoted in the Complaint is not binding on this Court, nor is it dispositive of any ethical issue involved; an impertinent ruling by one judge as to what a previous judge meant but did not write does not settle any issue in this case.

26. See answer 25 supra.

27. During the time that Respondent acted as successor trustee, he admits that he paid $25,360.00 to himself for trustee's fees; he admits that $20,000 was placed in trust for future legal fees to Icard Merrill to represent the trustee, and he paid $80,000 to the firm of Icard Merrill for legal work.

28. Denied that Respondent was a putative trustee; admit that said hearing took place.

29. Admit only that this paragraph distorts an unidentified expert's opinion testimony.

30. Admitted.

31. Admit that Respondent stated he did not receive the letter and that it should have been sent to his attorney, John Waskom, at Icard Merrill.

32. Admitted that $20,000.00 for future legal fees was held in trust only in case James Essenson somehow had the brokerage account frozen as he had done earlier in the proceedings; the funds were held in trust to pay Respondent's legal counsel.

33. Admitted that said funds were immediately returned to the trust.

34. Admit that such hearing took place.

35. Admit only that Respondent, acting as Mrs. Bloom's duly appointed successor trustee, disbursed funds from the trust for legitimate purposes. Further admit that the ruling paraphrased in the Complaint is not binding on this Court, nor is it dispositive of any ethical issue involved.

36. See answer 35, supra.

37. See answer 35, supra, regarding what another judge stated in an order.

38. Admitted; the money was timely repaid.

39. See answer 35, supra.

40. Admitted.

41. See answers 15, 20 and 25, supra.

42. See answer 41.

43. See answer 41.

44. Denied.

45. Admit only that Respondent ceased representing Mrs. Bloom in that respect upon being appointed successor trustee, that no real conflict was created, and that another lawyer assumed the legal representation of Mrs. Bloom's claim.

46. Admit only that Respondent took no action on Mrs. Bloom's behalf regarding her claim after she appointed Respondent successor trustee, and no substantive events transpired.

47. Admit only that Respondent was duly appointed successor trustee and the court later disqualified Respondent.

48. See answers 15, 20, 25 and 45, supra. The trust was never Respondent's law client; Respondent took all necessary steps to ensure no actual conflict arose; Respondent never intended as trustee to pay Mrs. Bloom's claim and in fact did not pay.

49. Admit only that this incomplete statement is presented disingenuously out of context; for purposes of the Rules, the trust was never Respondent's law client; Respondent took all necessary steps to ensure no actual conflict arose; Respondent never intended as trustee to pay Mrs. Bloom's claim and in fact did not pay.

50. Admit the accuracy of the assertion but also admit that the Bar was advised that Respondent's memory is affected by post-traumatic stress disorder.

51. Admitted that the document speaks for itself.

52. Admitted that the document speaks for itself.

53. Admitted.

54. Admitted that the document speaks for itself.

55. Admitted.

56. Admit that the document provided was a scanned copy of the waiver with an enhanced image of her signature, as it was not readable as scanned.

57. Denied.

58. Admit only that Mrs. Bloom signed an Acknowledgment and Waiver of Informed Consent, that she testified to the same, and that her successor counsel, Allan Baily, testified likewise.

59. Denied.

60. Admitted; neither did Respondent clear the document of metadata.

61. Admitted.

62. See answer 56, supra.

63. Admitted.

64. Respondent admits that he altered the document to make her signature readable and should not have done that.

65. See answer 64, supra.

66. Admitted.

67. Admitted.

68. Admitted.

69. Admitted.

70. Respondent denies this constitutes an ethics violation; denies that any Bar agent ever mentioned requesting or requiring him to sign any papers related to the subpoena; denies that the

subpoena made any mention of signing any form; and admits that upon immediately consulting his attorney he was advised not to sign the paper.

71. Respondent admits only that due to COVID restrictions, he placed all devices outside his office door on July 17, but when he refused to sign the paper presented, the Bar's agents refused to take the devices and left them there after photographing them; thereafter, Respondent retook possession of the abandoned items that were left and on July 22, 2020, delivered the same to Sylint Group as alleged.

72. Admit only that on July 22, 2020, Respondent delivered to Sylint Group all of the devices retrieved after Sylint Group took possession of, and then abandoned them on July 17, 2020; if one or more went missing it is because Sylint Group agents first took and then abandoned possession of them outside Respondent's law office.

73. Any opinion of the Bar's paid expert speaks for itself.

74. See answer 73, supra; Respondent only admits using optimization and registry cleaner programs in his devices on an almost daily basis since 2012 and the Bar was advised of that.

75. Denied. See answer 73, supra; on July 17, 2020, the device was provided to Sylint Group (which they photographed); if the Bar's agents lost or caused any item to be lost, instead of simply taking all of them that day, any such loss is the Bar's fault.

76. See answer 75, supra.

77. See answer 75, supra.

78. Denied the document is false; see answer 56, supra.

79. Denied, see answer 56, supra.

DEFENSES

1. Estoppel Based on Spoliation of Evidence. The Bar is estopped from using the fact of a missing computer to prove or assist in proving any alleged rule violation, since the Bar's agents took control of, and then abandoned, Respondent's computer devices.

2. Estoppel Predicated on Orders by Other Courts. The Bar in its complaint seeks to establish or preclude legal or ethical issues based on rulings or opinions of other courts, which are not binding on this Court.

3. Failure to State a Cause of Action. (a) No allegation has been pled that supports the charge that Respondent violated Rule

4-8.4(g) (failure to respond in writing to The Florida Bar); (b) The charge that Respondent engaged in a conflict of interest is unsupported because the Bar has misapprehended the law. A trustee always has inherent potential conflicts of interest with the beneficiaries because the trustee is always entitled to a fee paid from the trust; however, even if the trustee is a lawyer, the trust is not the trustee's law client for purposes of analyzing Rules 4-1.7 and 4-1.9, both of which require legal representation of two adverse clients. If a lawyer's self-interest in receiving a fee for acting as trustee violates Rule 4-1.7(a)(2), then no lawyer could ever serve as a trustee, which is absurd.

4. Full Performance. On July 17, 2020, Respondent fully complied with the subpoena issued by the grievance committee but the Bar's agents failed or refused to accept the materials supplied.

5. Assumption of Risk. Similarly, by taking possession of the subpoenaed materials and then abandoning possession of the same in an area open to the public, the Bar and its agents assumed the risk of loss of items for which they now blame Respondent.

6. Unclean hands. The Bar knowingly published to others attorney-client privileged material that was inadvertently disclosed

and used the material in the probable cause hearing; also, the Bar pleads and seeks to rely on metadata mined by its agents from Respondent's computers, which evidence is disallowed by the courts as inherently misleading.

CERTIFICATE OF SERVICE

I CERTIFY that this paper was e-filed through the portal with the Clerk, and served to Jennifer Dillon, at jdillon@floridabar.org, rrivera@floridabar.org, tampaoffice@floridabar.org, and Katrina Brown at kschaffhouser@floridabar.org, to Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org, on June 1, 2021.

/s/ **Brett Alan Geer**

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